



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

July 19, 1978

Honorable Tony West
Arizona State Representative
State Capitol, House Wing
1700 West Washington
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 78-147 (R78-195)

Dear Representative West:

There are three reasons why we cannot reply to the list of questions posed in your June 19, 1978 request.

First, we have no authority to do so. We do not have any powers beyond what the Constitution and the Legislature confer. See, e.g., Smith v. Superior Court, 101 Ariz. 559 (1967). Our statutory authority (duty) to render written legal opinions is found in A.R.S. § 41-193.A.7, which provides that the Department of Law shall issue written opinions:

7. Upon demand by the legislature or either house thereof, any public officer of the state or a county attorney, render a written opinion upon any question of law relating to their offices.

It is clear that the legal questions you pose do not truly relate to the office of a state legislator. While we understand the need for legislators to assist their constituents, to have this office render legal opinions for the principal benefit of persons other than those denominated in § 41-193.A.7 is clearly contrary to the statute.

Second, by long-standing (and sound) policy we do not answer questions that are presently being litigated. It is my understanding that many or all of the ten questions you pose are at issue in an enforcement action pending before the Arizona Corporation Commission Securities Division.

Third, we are bound by the State Bar's Arizona Ethics Opinion No. 251 (July 17, 1968). That opinion arose from a Corporation Commissioner's request for a legal

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opinion concerning the powers retained by a corporation involuntarily dissolved by operation of then-existing A.R.S. §§ 10-364 and 365. The Ethics Committee--in reciting the facts--said "It is obvious . . . that the Corporation Commissioner is merely passing on the question raised by [a public accounting firm]."1.

The Opinion then held that:

1. It was "quite appropriate for the Attorney General to furnish opinions to State officers when the request for the opinion is sought by that person for the express purpose of carrying out the duties of his office or department." (Emphasis supplied.)

2. The furnishing of legal advice in this instance "would be contrary to the express provisions of Canon 35. . . ."2

3. "It is quite obvious that the Commissioner is merely passing on a question submitted to him by a third party, and there is no indication whatsoever that the Commissioner would, if furnished with such an opinion, use the same in the furtherance of his duties as a Corporation Commissioner. Obviously, there is lacking the direct personal relationship that must exist between an attorney and his client as called for in Canon 35."

I know you sympathize with and support our desire to conserve our legal resources so that we might better

1. The facts also recited that it was the policy of the Attorney General's Office not to answer opinion requests "where they are obviously for third-party legal advice."

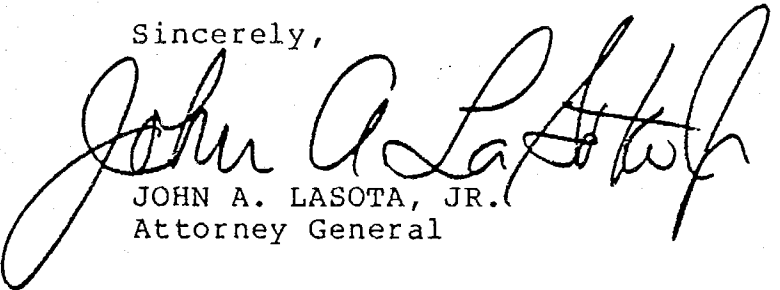
2. Canon 35 is now substantially codified in Rule 29(a) of the Arizona Supreme Court as Disciplinary Rule 5-107.

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perform--among other duties--the opinion-answering responsibility given us by the Legislature in A.R.S. § 41-193.A.7.

Sincerely,

A large, stylized handwritten signature in dark ink, reading "John A. Lasota, Jr." with a flourish at the end.

JOHN A. LASOTA, JR.
Attorney General

JAL:kk